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No. 94-521

In The
Supreme Court of the United States
October Term, 1994

ROBERT L. VERNON,

Petitioner,

v.

CITY OF LOS ANGELES, et al.

Respondents.

Brief In Opposition To a Petition For Writ of Certiorari To The United States Court of Appeal For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Based on the issues actually decided by the United States Court of Appeal for the Ninth Circuit, the question presented by petitioner should be restated as follows: Whether the First Amendment is violated by a governmental request to investigate if a high-ranking public employee is impermissibly injecting his religious views into the workplace.[1]

STATEMENT OF THE CASE

At the time this action was commenced, respondent Zev Yaroslavsky ("Yaroslavsky"), a Los Angeles City Council member for sixteen years, was charged with oversight responsibility for the Los Angeles Police Department ("LAPD"). (CR[2] 48,

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[1] Petitioner is not challenging the validity of the investigation itself, merely the request for an investigation. Nor is he challenging the Ninth Circuit's decision that his California constitutional rights were not violated.

[2] CR refers to the Clerks Record in the Ninth Circuit.

Yaroslavsky Decl., pp. 2-3.) Petitioner Robert Vernon ("Vernon"), then Assistant Chief of Police for the City of Los Angeles, was an outspoken and self-professed fundamentalist Christian. (CR 4, Vernon Decl., pp. 2-3.) In the course of Yaroslavsky's many years of supervision of police proceedings, he had received complaints from LAPD employees that Vernon was abusing his high-ranking position in the LAPD to promote his religious beliefs on the job. (CR 48, Yaroslavsky Decl., pp. 3-4.)

In 1990 and early 1991, Yaroslavsky became alarmed by an increasing number of complaints, from both inside and outside the LAPD, pertaining to Vernon's behavior. (See, e.g., CR 48, Yaroslavsky Decl., pp. 3-9; Levant Decl., pp. 94-97; Parks Decl., pp. 99-100; Dotson Decl., pp. 102-04; Brewer Decl., pp. 107-08.) For example, one high-ranking LAPD official, who had

known and worked with Vernon for 34 years, complained to Yaroslavsky that Vernon was manipulating test scores in order to favor fundamentalist Christians in hiring and promotional decisionmaking. (Id., Yaroslavsky Decl., p. 4; Dotson Decl., pp. 102-03.) Further, Yaroslavsky learned that Vernon pressured on-duty officers to attend Sunday services at his church and at religious prayer meetings conducted by Vernon at LAPD headquarters. (Id., Yaroslavsky Decl., p. 9; Gates Decl., pp. 177-78 & Exhs. "B" & "C," pp. 185-94; Hickman Decl., p. 131; Windham Decl., p. 137; Dotson Decl., p. 103.)

By way of further example, Yaroslavsky learned that Vernon had contravened established LAPD and City policy by attempting to prevent arrests at illegal demonstrations by those who shared his religious beliefs (i.e., anti-abortion protestors attempting to shut down medical

clinics), while seeking more arrests at legal demonstrations by those who did not share his beliefs (i.e., peaceful gay rights demonstrators). (CR 48, Yaroslavsky Decl., pp. 3-4; Brewer Decl., pp. 107-08; Levant Decl., pp. 95-97; Parks Decl., pp. 99-100.) Vernon had acknowledged in news articles that he consulted with church elders on ways to handle issues related to the abortion issue; and it was common knowledge that he was against abortion and homosexuality on religious grounds --all of which he allowed to influence his handling of LAPD matters, regardless of LAPD policy. (E.g., Id., Yaroslavsky Decl., pp. 5-7; Parks Decl., p. 100; Brewer Decl., p. 107.)

Petitioner challenges the evidentiary value of the information Yaroslavsky had obtained. Much of that information, however, came from high-ranking LAPD officials who had worked with Vernon for a significant length of time and who had

personally observed his conduct. (CR 48, Dotson Decl., p. 102; Brewer Decl., pp. 105-07; Levant Decl., pp. 94-97; Parks Decl., p. 99; Hickman Decl., pp. 130-32; Windham Decl., pp. 136-37; Henning Decl., pp. 196-97; Spotts Decl., pp. 134-35.) Moreover, respondents' many declarations were offered to show Yaroslavsky's and the other City officials' state of mind at the time they requested the investigation, not to prove the truth of the statements asserted.

Petitioner also makes sweeping statements, wholly without basis, that there is no evidentiary support for certain categories of allegations made against him. For example, he states that "not a single affidavit was filed or allegation made that Vernon ever mistreated women in the LAPD." (Pet., p. 9, n. 5.) Yet, respondents submitted the declarations of Jerry Trent, a 26 year LAPD veteran, and Kenneth

Hickman, a 27 year LAPD veteran, who testified that Vernon not only discriminated against women in hiring practices, but informed his command level officers that women should not be hired because it is contrary to the teachings of the Bible. (CR 48, Trent Decl., pp. 139-40; Hickman Decl., p. 131.)

In addition to this tide of information from LAPD insiders, in early 1991, there was growing public dissatisfaction with the LAPD, not only because of the incident involving Rodney King, which occurred on March 3, 1991, but also because of Vernon's frequently expressed prejudices and their influence on his decision-making. (CR 48, Yaroslavsky Decl., pp. 5-6.) Indeed, the Christopher Commission, which was established by then Mayor Bradley in response to the Rodney King incident, called Vernon specifically to testify about the injection of his religion into the

operations and onto personnel of the LAPD. (CR 4, Vernon Decl., Exh. "3," p. 53; CR 48 Brewer Decl., p. 105 & Exh. "A," pp. 114-16, 121-23.)[3]

The foregoing complaints and information he received, among many others, caused Yaroslavsky to be concerned that Vernon's religion was indeed permeating every level of LAPD management and possibly establishing a religious preference within the organization. (See CR 48, Yaroslavsky Decl., pp. 7-8.) Yaroslavsky felt he had a duty to request an inquiry into whether there was any basis for the allegations that Vernon's religious views were affecting his on-duty conduct in such a way as to violate either LAPD policies and

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[3] Petitioner would have the Court believe that Yaroslavsky acted precipitously upon reading a single magazine article about religious audiotapes Vernon had made fifteen years earlier. A full and fair examination of the record, however, reveals that Yaroslavsky was responding to the influx of internal complaints and the public demand for accountability.

regulations or the civil and constitutional rights of both police officers and citizens. (CR 48, Yaroslavsky Decl., pp. 7-11.) To do any less would have been a dereliction of his duties and might have opened the City to legal exposure. (See CR 48, Sheinbaum Decl., p. 164.)

As petitioner has indicated, Yaroslavsky first brought this issue to the floor of the City Council in late May 1991. (CR 48, Yaroslavsky Decl., pp. 9-10.) He then followed up on June 3, 1991, with a letter to the Board of Police Commissioners ("Board"), requesting that an investigation be conducted to determine whether Vernon was improperly injecting his religious views into the operations and policies of the LAPD. (Id. & Exh. "C," p. 45.) Other City Council members and the Mayor of Los Angeles agreed with Yaroslavsky that the investigation was warranted. (CR 48, Braude Decl., p. 147; Picus Decl., p. 145;

Woo Decl., p. 146; CR 4, Vernon Decl., Exh. "3," p. 22.)

On the same day that Yaroslavsky sent his investigation request, and before the Board had even considered that request, Vernon brought himself into the media. He appeared on KNBC-TV and stated to the viewing public that the requested investigation was illegal and viola ive of his rights. (CR 4, Vernon Decl., Exh. "3," pp. 24, 26.)

On June 4, 1991, the Board voted unanimously to direct Chief of Police Daryl Gates ("Gates") to investigate the matter. (CR 48, Lomax Decl., pp. 149-51 & Exh. "B.") This decision was based primarily on a concern that the City, through Vernon's alleged actions, might be violating the constitutional requirement of separation of church and state. (See Id., Sheinbaum Decl., p. 165 & Exh. "C," p. 172.)

Notwithstanding petitioner's claims that his religious views were to be the subject of the investigation, the overwhelming evidence belies this characterization. The Board, which requested the investigation, explicitly directed that only Vernon's on-duty conduct be investigated. In this regard, Commissioner Sheinbaum stated at the June 4 Board meeting:

> It is our intent as a Commission that the Chief not conduct an inquiry into Assistant Chief Vernon's religious beliefs, his private religious activities, or any off-duty communications . . .. The only question as far as I'm concerned, and I think that this would be true of the rest of the Commission, is whether any of those views impact on his

> performance as the Assistant Police Chief.

(CR 48, Sheinbaum Decl., Exh. "C," pp. 170-72, emphasis added.) Likewise, Chief of Police Daryl Gates, who received the request and carried out the investigation, believed it was directed only at Vernon's on-duty conduct:

> I received a memorandum from [Lomax] requesting that an investigation be conducted into . . . the <u>on-duty activities</u> of Assistant Chief Robert Vernon. . . . The inquiry was limited to the <u>on-duty activities</u> of Chief Vernon. . . . Chief Vernon's personal religious views were not the subject of the investigation. Rather, only his conduct, his on-duty activities and his job-related performance were examined.

(CR 48, Gates Decl., p. 178.)[4]

Vernon laments the damages he purportedly suffered as a result of the request to investigate him. Yet, as he acknowledged below, no investigation of his religious views or activities ever actually took place; Chief Gates took little or no action. (Appellant's Brief, p. 17.) Before Chief Gates had even concluded his inquiry, Vernon already had filed this lawsuit. On November 26, 1991, Chief Gates verbally reported to the Board that his investigation had not produced any evidence of wrongdoing by Vernon.[5] (CR 48, Gates

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[4] In light of respondents' clear-cut direction to exclude from the investigation any of Vernon's off-duty religious activities, the reference to "consultation of religious elders on issues of police policy" referred only to an investigation into whether Vernon followed established LAPD policies or contrary church guidelines with respect to on-duty police force handling of abortion protestors and gay rights marchers.

[5] In point of fact, as Yaroslavsky feared and suspected, it appears that Chief Gates and his office made little or no real effort to investigate the allegations of Vernon's misconduct. (CR 48, Yaroslavsky Decl., p. 12.)

Decl., p. 179.) The investigation was terminated, no disciplinary charges were instituted against Vernon and the Board took no further action. (Id.)

Moreover, Vernon admitted that the City's activities did not prevent him from exercising his religion and did not interfere with his relationship with God. (SR[6] 3, Vernon Depo., pp. 205-07.) Indeed, as he stated, Vernon felt closer to God after the investigation was initiated than ever before. (Id. at pp. 209-10.)

Petitioner's other items of damage are similarly suspect. For example, although Vernon claims that he sustained damage due to media attention, it was Vernon himself who had invited such attention, some of it long before there was ever any mention of the investigation. Indeed, he freely discussed with reporters from Christianity

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[6] SR refers to the Supplemental Excerpt of Record filed by the City.

Today and elsewhere his consultations with church elders before deciding whether to arrest anti-abortion protestors. (CR 4, Vernon Decl., Exh. "3," p. 24-26, 31, 32, 35, 41-42.) By way of further example, in May 1991, a month before the investigation was requested, Vernon had been issuing press statements regarding the role his religious beliefs played in his job-related decisions. (E.g., Id. at p. 19.)

Finally, there is no support for Vernon's suggestion that the request for an investigation ruined his career. To the contrary, he voluntarily retired on June 3, 1992. (Appellant's Brief, p. 7, n. 2.) Given the public's cry for new LAPD leadership following the Rodney King incident, Vernon's speculation that, but for the investigation, he might have otherwise succeeded to Gates as Chief of Police, is wholly insupportable.

REASONS WHY THE WRIT SHOULD BE DENIED

I. Petitioner's "Question Presented" Will Not Properly Be Before The Court If Certiorari Is Granted.

To create the most engaging issue for review, petitioner claims that the Ninth Circuit approved of a governmental investigation into a public employee's religious beliefs and associations. To permit this holding to stand, argues petitioner, would sanction witch hunts into the religious beliefs of the citizenry. Petitioner's ballyhoo aside, the Ninth Circuit never issued such a proclamation, and therefore, there exists no "dangerous precedent" to review or overturn.

Indeed, in his zeal, petitioner attributes factual findings and legal holdings to the Ninth Circuit which, quite simply, the record does not support and which did not occur. In point of fact, the Ninth Circuit expressly found that the City

did not call for an investigation of Vernon's private religious beliefs and associations. Rather, as the Ninth Circuit found, the investigation focused only on the impact of those beliefs on Vernon's public, on-duty conduct: "It is clear from the record that the investigation was restricted in its scope to consideration only of Vernon's on-duty activities . . .." (Pet. App. A at p. 23. See also Pet. App. A at pp. 22-23, 27, 30-33 & nn. 2-5, 37 and 38.)[7]

Having established this factual predicate, the Ninth Circuit then applied the appropriate tests to governmental investigations of on-duty conduct and determined that such an investigation did

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[7] As set forth in detail in the Statement of the Case, all of the documentary evidence and respondents' numerous declarations provide a solid basis for the Ninth Circuit's factual finding that the City had no interest in investigating Vernon's private religious activities, only whether he was improperly injecting his religious views into the workplace.

not fun afoul of either federal or state constitutional proscriptions. (Pet. App. A at pp. 24, 40-41.) As a consequence, the Ninth Circuit never addressed, much less analyzed or approved, the constitutionality of the theoretical and non-existent investigation postulated by petitioner.

Therefore, unless this Court wishes to "rewrite" the factual findings of the Ninth Circuit regarding the limited scope of the City's investigation and, in contravention of all the evidence, conclude that the City actually investigated Vernon's personal religious beliefs regardless of their impact on his duties and responsibilities, certiorari should not be granted on the question presented by petitioner.

II. Because The Decision Below Admittedly Turns Upon The Highly Unusual Facts Of This Case, The Decision Is Unlikely To Affect Other Litigants.

Typically, claims of religious interference involve the rights of teachers, students, prisoners, therapists, patients or religious-affiliated institutions, where the judicial decisions will have a wide-ranging impact on the general public. See, e.g., Bishop v. Aronov, 926 F.2d 1066, 1077 (11th Cir. 1991), cert. denied, 112 S.Ct. 3026, 120 L.Ed.2d 897 (1992) (university professor); Roberts v. Madigan, 921 F.2d 1047, 1059 (10th Cir. 1990), cert. denied, 112 S.Ct. 3025, 120 L.Ed.2d 896 (1992) (elementary school teacher); Langlotz v. Picciano, 683 F. Supp. 1041, 1047 (D. Va. 1988), aff'd without op., Langlotz v. Valentine, 905 F.2d 1530 (4th Cir. 1990) (juvenile court outreach counselor); Baz v. Walters, 782 F.2d 701, 704, 708 (7th Cir.

1986) (Veterans Administration chaplain); Spratt v. County of Kent, 621 F. Supp. 594, 598, 601 (W.D. Mich. 1985), aff'd 810 F.2d 203 (6th Cir. 1986), cert. denied, 480 U.S. 934, 107 S.Ct. 1574 (1987) (county social worker).

In contrast to the foregoing cases, petitioner, the District Court and the Ninth Circuit all acknowledge the "highly unusual facts" of this case render the decision below of little precedential value. (Pet. at pp. 10 & 12 n. 8; Pet. App. A at p. 16; Pet. App. B at p. 44 n. 1.) First, unlike an investigation of a member of the general public, the City conducted an investigation of a high-ranking officer of an organization responsible for protecting the population and upholding the laws. Without the ability to conduct an investigation under these specific and narrow circumstances, there existed a very real risk that Vernon

could be abusing the public trust and establishing a religious preference within the LAPD, in violation of the Establishment Clause.[8]

Second, this case is unusual because of the insignificance of the government's activities. Whereas, persons claiming that their religious rights have been violated typically experience some tangible loss of job benefits (e.g., Langlotz, 683 F.Supp. at 1047 (forced resignation); Baz, 782 F.2d at 704 (termination); Spratt, 621 F. Supp. at 598 (termination)), Vernon suffered no

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[8] Moreover, for those cases occurring in California, but not elsewhere, government entities are also bound by, and prohibited from violating, the even broader "No Preference Clause," which guarantees "[f]ree exercise and enjoyment of religion without discrimination or preference." Cal. Const., Art. I, § 4. This provision, which has no counterpart in the federal constitution, prohibits any appearance that the government has allied itself with one specific religion. Hewitt v. Joyner, 940 F.2d 1561, 1566-67 (9th Cir. 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 969 (1992). And, under the "No Preference Clause," religious preference is forbidden even when there is no discrimination. Fox v. City of Los Angeles, 22 Cal.3d 792, 796, 150 Cal.Rptr. 867, 869, 587 P.2d 663, 665 (1978).

job-related repercussions. He was not terminated, disciplined, suspended, demoted or even chastised. In point of fact, respondents' inquiry was a non-event -- the investigation never really got off the ground. This Court has already denied certiorari in cases of much wider applicability in terms of the extent of government action taken. E.g., Roberts, 921 F.2d at 1050 (elementary school teacher issued directive to curb religious practices); Bishop, 926 F.2d at 1069 (university professor issued warning to curb religious behavior); Spratt, 621 F.Supp. at 598 (county social worker terminated).

Third, this case involved evidence that petitioner had injected his religious views into the LAPD to such an extent that his religion permeated every level of management. (See CR 48, Yaroslavsky Decl., pp. 7-8.) Such extreme examples of

religious infiltration into the public sector are unlikely to occur with frequency. Rather, challenges of this type typically will involve the right to engage in a particular activity, such as prayer in public institutions, keeping religious materials or symbols on one's desk and religion in the classroom.

Fourth, and perhaps most importantly, Vernon does not challenge the constitutionality of the investigation itself, only the call for an investigation. Certainly, most litigants will challenge the government's actual activities, not what the government might hypothetically do.

In sum, petitioner's case is one of extremes. He occupied a powerful, high profile position within a critical and publicly sensitive agency. He asserts the broadest possible right to inject his religious views into his job responsibilities, and then claims foul when the gov-

ernment attempted to investigate his actions, took no action against him and ultimately caused him no tangible job losses. Petitioner is challenging not what the government did to him but only what the government might have done to him -- the ultimate hypothetical question.

Thus, this is an intensely fact driven case, based on a fact pattern that has no widespread applicability.

III. The Applicable Law Is Well-Established.

There is nothing unusual or problematic about applying well-established constitutional analyses to those facts of this case. In analyzing Vernon's claim under the Free Exercise Clauses of the California and federal constitutions, the Ninth Circuit applied the traditional balancing test enunciated by the Court in Sherbert v. Verner, 374 U.S. 398 (1963). Vernon does not challenge the applicability

of the Sherbert balancing test to his Free Exercise claim.

In analyzing Vernon's claim under the Establishment Clauses of the California and federal constitutions, the Ninth Circuit applied the equally well-established three-part test articulated by the Court in Lemon v. Kurtzman, 403 U.S. 602 (1971). Vernon does not challenge the applicability of the Lemon test to his Establishment Clause claim.

With the parties (and the Circuits) all in agreement regarding the applicable law, there exists no reason for the Court to grant review.

IV. There Are No Important Questions Of Federal Law Which Need To Be Decided.

Had the Ninth Circuit held, as Vernon wants the Court to believe, that the government can investigate a public employee's religious views without regard to job performance, the Court might be

presented with an important question of federal law. Yet the Ninth Circuit decided only whether the government can investigate the imposition of one's religious views into the public workplace. As made clear in the cases set forth in Section II, supra, it is already well-established that the government can do much more than merely investigate the imposition of religion into the workplace. It can discipline, suspend and even terminate employees for engaging in such conduct. E.g., Langlotz, 683 F.Supp. at 1047 (forced resignation); Baz, 782 F.2d at 704 (termination); Spratt, 621 F. Supp. at 598 (termination).

It is equally well-established that government is entitled to take action to avoid violations of the Establishment Clause and the anti-discrimination statutes. E.g., Lemon, 403 U.S. at 613-14. See also Bishop, 926 F.2d at 1077; Roberts, 921 F.2d at 1054 (school district entitled

to prevent potential Establishment Clause violation by ordering teacher to remove Bible from his desk during school hours); EEOC v. Fremont Christian School, 781 F.2d 1362, 1369 n.2 (9th Cir. 1986) (EEOC entitled to prohibit school from violating anti-discrimination statutes in its provision of health benefits).

Again, Vernon points to no split among the Circuits in either of these regards. There is simply no undecided, legal conflict of national significance arising out of this case with respect to which the Court's guidance is needed.

V. The Ninth Circuit Did Not Decide Any Federal Questions In Conflict With This Court's Decisions.

A. The Ninth Circuit Did Not Misapply The Lemon Test.

The Lemon test provides that governmental action violates the Establishment Clause only if it (1) lacks

any secular purpose, (2) has as its primary effect the advancing or inhibiting of religion and (3) results in excessive entanglement between government and religion. 403 U.S. at 612. In keeping with Lemon, the Ninth Circuit found, like the District Court, that the City's investigation had as its valid secular purpose the determination of whether there was any basis to the allegations that Vernon's religious views were affecting his job performance in such a way as to violate either LAPD policies and regulations or the civil and constitutional rights of both police officers and citizens. (Pet. App. A at p. 29; Pet. App. B at p. 60.) The Ninth Circuit actually went even further than it had to in protecting Vernon's rights, holding that the foregoing was the City's actual or primary purpose, not just a secular purpose. (Pet. App. A at pp. 28-29.)

Despite this careful analysis, petitioner attributes three errors in connection with the Ninth Circuit's Establishment Clause holding. First, petitioner argues, without citation, that there can never be a legitimate secular purpose for investigating one's religious beliefs and associations, apparently even if one is violating the law. (Pet. at p. 16.) Petitioner is just plain wrong.

Although the First Amendment embraces the freedom to exercise one's religious beliefs, that freedom is not absolute. Wisconsin v. Yoder, 406 U.S. 205, 219-20, 92 S.Ct. 1526, 32 L.Ed. 15 (1972); Sherbert, 374 U.S. at 402-03; School Dist. of Abington v. Schempp, 374 U.S. 203, 217-18, 83 S.Ct. 1560 (1963). Courts routinely uphold laws and other governmental acts which interfere with the unfettered exercise of individuals' religious beliefs. See Employment Div., Dept. of Human

Resources v. Smith, 494 U.S. 872, 879-880, 110 S.Ct. 1595, 1599-01, 108 L.Ed.2d 876 (1990) (discussing cases upholding tax laws, child labor laws, Sunday-closing laws and the draft, among others). The Tenth and Eleventh Circuits specifically have authorized government restrictions of the religious practices of individual citizens when those practices cross over into the public realm and infringe on other citizens' constitutional rights. Roberts, 921 F.2d at 1054; Bishop, 926 F.2d at 1077-78.[9]

In connection with the first prong of the Lemon test, petitioner also accuses the Ninth Circuit of "deliberately reliev[ing] government of the burden of using secular, less restrictive, readily available means for accomplishing its goal." (Pet. at p. 16.) Lemon does not implicate the "least

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[9] This Court has denied certiorari as to each of these decisions.

restrictive means" test, however; that determination is made under the Free Exercise Clause analysis (the Sherbert test). Petitioner apparently has confused the two tests.

In connection with the second prong of the Lemon test, the Ninth Circuit held that "[t]he primary purpose of the government action was the investigation of any possible impermissible or illegal on-duty conduct of Vernon" and not disapproval of religion. (Pet. App. A at pp. 32-33.) Petitioner argues that the City's directive to investigate Vernon's consultations with religious elders on issues of public policy renders this holding "shaky" because it signals disapproval of religious beliefs. (Pet. at p. 16.)

The Ninth Circuit's holding, however, recognizes petitioner's concerns. It reasoned that, at most, the request to investigate the consultations suggests a

"possible" disapproval of the underlying beliefs, but that the key inquiry under the second prong is whether the government action "primarily" disapproves of the religious beliefs. (Pet. App. A at p. 32.) Given all of the record evidence, including newspaper articles in which Vernon himself volunteers that he consults with religious elders before taking official LAPD action and establishing police policy, it was entirely reasonable for the Ninth Circuit to conclude that "[n]either the pre-investigation statements nor the investigation itself could reasonably be construed to send as its primary message the disapproval of Vernon's religious beliefs." (Pet. App. A at p. 33.)[10]

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[10] Vernon does not assign any error to the Ninth Circuit's analysis under the third prong of the Lemon test.

B. The Ninth Circuit Did Not Misapply The Sherbert Test.

Under the Sherbert test used to analyze alleged violations of the Free Exercise Clause, petitioner must first meet the threshold requirement of establishing that the government has placed a substantial burden on his free exercise of religion. Sherbert, 374 U.S. at 403; Thomas v. Review Bd., Indiana Employment Sec. Div., 450 U.S. 707, 717-18 (1981). The Ninth Circuit ruled that petitioner failed to establish that he suffered a substantial burden and, therefore, it proceeded no further with the analysis. (Pet. App. A at pp. 23-24.)

Petitioner attributes two errors in connection with the Ninth Circuit's analysis under Sherbert. He first argues that the Ninth Circuit simply ignored all of the evidence of the harm he suffered. (Pet. at p. 17.) To the contrary, the

Ninth Circuit expressly analyzed the allegations of petitioner's complaint and the declaration testimony of petitioner and others. (Pet. App. A at pp. 22-23.) As set forth in the Statement of the Case, the evidence in the record demonstrates that petitioner suffered no tangible job losses. The investigation did not interfere with his practice of religion and actually brought him closer to God. And while petitioner ironically tries to liken himself to a Jewish holocaust survivor required to wear a yellow star because of the media attention, it was petitioner himself who injected his religious activities into the media long before the investigation had ever been called and who continued to do so throughout the investigation. The Ninth Circuit did not ignore petitioner's injury. He simply suffered no constitutionally cognizable injury.

Second, petitioner argues that Laird v. Tatum, 408 U.S. 1 (1972) does not require him to show that he actually abandoned his religious practices in order to state a constitutional injury. (Pet. at p. 19 n. 12.) While this is true, Laird does require constitutional claimants to demonstrate more than a mere subjective chill. They must demonstrate either "a claim of specific present objective harm or a threat of specific future harm." Laird, 408 U.S. at 14. Petitioner demonstrated neither.

CONCLUSION

For all the foregoing reasons, respondents respectfully request that the Court deny the petition for writ of certiorari.

November 3, 1994 Respectfully submitted,

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Shari Cohen Rosenman
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